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No. **494**

In the Supreme Court of the United States

OCTOBER TERM, 1940

THE UNITED STATES OF AMERICA, PETITIONER

v.

**JOSEPH T. RYERSON AND EDWARD L. RYERSON, JR.,
AS EXECUTORS OF THE ESTATE OF MARY M.
RYERSON**

**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH
CIRCUIT**

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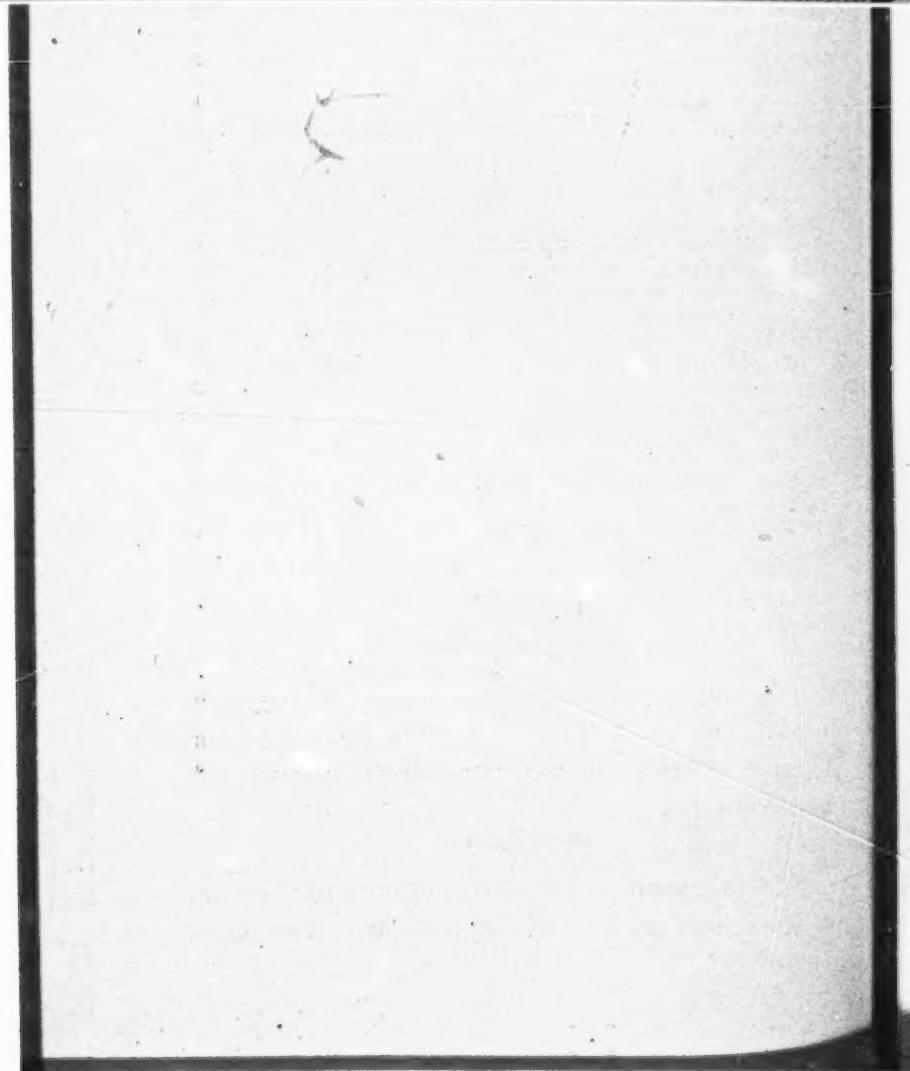
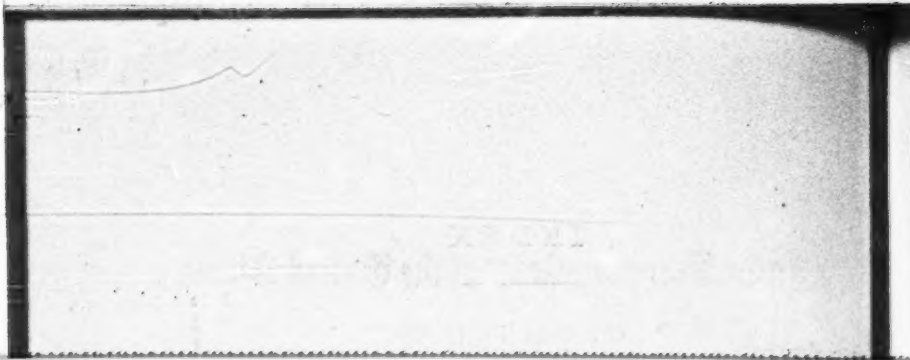
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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Seventh Circuit, entered in the above-entitled cause on July 9, 1940.

OPINIONS BELOW

The opinion of the District Court (R. 61-71) is reported in 28 F. Supp. 265. The opinion of the Circuit Court of Appeals (R. 90-97) has not yet been reported.

JURISDICTION

The judgment of the Circuit Court of Appeals were entered on July 9, 1940 (R. 98). The juris-

diction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

In computing the gift tax, is the value of the gift of a fully paid life insurance policy (a) the amount of the cash surrender ~~value of the policy~~ or (b) the cost of obtaining a like policy on the date of the gift?

STATUTE AND REGULATIONS INVOLVED

These will be found in the Appendix, *infra*, pp. 7-10.

STATEMENT

In 1928 and 1929, the taxpayer¹ purchased two single premium insurance policies on her own life in the face amount of \$100,000 each (R. 71). Taxpayer was 72 years old when the first policy was issued and 73 when the second was issued (R. 38, 39, 41, 45, 51, 58). In December, 1934, when the taxpayer was 79 years old, she had each of the policies divided into two fully paid up policies, each in the amount of \$50,000 (R. 38, 71).

In December, 1934, the taxpayer assigned one of the policies to one individual, a second to another

¹ The taxpayer died during the pendency of the appeal to the Circuit Court. The respondents herein, as executors of her estate, have been substituted as parties herein. (R. 88-89.)

individual, a third to trustees under a trust agreement, and a fourth to other trustees under another trust agreement (R. 71-72).

The aggregate cash surrender value of the four policies on the dates they were assigned as gifts was \$161,965 (R. 72). If the insurance company which had issued the policies had written similar policies on the date of assignment, on the life of a person of the then age of the taxpayer, it would have charged \$42,856.50 for each policy, or an aggregate of \$171,426 for the four policies (R. 72).

In the computation of the taxpayer's gift tax liability for 1934 and 1935, she reported the assignment of these policies as gifts in the amount of their cash surrender value at the time of the assignment, or an aggregate of \$161,965. In the final determination of the taxpayer's gift tax liability for 1934 and 1935, the Commissioner of Internal Revenue increased the value of the gift of the policies to \$171,426, or the cost of duplicating the policies on the date of the assignment (R. 72, 73).

The deficiency in gift tax for 1934 and 1935, resulting from this determination, was paid and this suit was brought for the recovery of that amount (R. 73).

The court below, reversing the District Court, held that the cash surrender value of the policies was to be used in determining the amount of the

gift, rather than the cost of duplicating the policies on the date of the gift (R. 90-94).²

SPECIFICATION OF ERROR TO BE URGED

The Circuit Court of Appeals erred in holding that the tax on the gifts of the insurance policies here involved was to be based on the cash surrender values on the date of the gifts and not on the cost of duplicating the policies.

REASONS FOR GRANTING THE WRIT

1. The decision of the court below is probably in conflict with *Guggenheim v. Rasquin*, 110 F. (2d) 371 (C. C. A. 2d), pending on petition for certiorari, No. 92, October Term, 1940, and *Commis-*

² The second question before the court related to the number of \$5,000 exclusions allowable under Section 504 (b) of the Revenue Act of 1932 with respect to the taxpayer's gifts in trust. The Circuit Court of Appeals reversed the District Court and decided this question in favor of the Government, holding that only one such exclusion was allowable with respect to each gift in trust, and that the number of such exclusions was not to be determined by the number of beneficiaries of the trusts. This portion of the decision is in conflict with *Pelzer v. United States*, 31 F. Supp. 770 (C. Cls.), petition for certiorari filed September 3, 1940, No. 393; *Welch v. Davidson*, 102 F. (2d) 100 (C. C. A. 1st); *Rheinstrom v. Commissioner*, 105 F. (2d) 642 (C. C. A. 8th); *Robertson v. Nee*, 105 F. (2d) 651 (C. C. A. 8th); *McBrier v. Commissioner*, 108 F. (2d) 967 (C. C. A. 3d); *Early v. Reid* (C. C. A. 4th), decided August 7, 1940, not officially reported but found in 1940 Prentice Hall, Vol. 4, par. 62,826. We have been advised that respondents intend to file a cross petition for a writ of certiorari on this question.

Commissioner v. Powers (C. C. A. 1st), decided July 16, 1940, not officially reported but found in 1940 Prentice Hall, Vol. 4, par. 62,785. The Government has filed a memorandum not opposing the taxpayer's petition for certiorari in the *Guggenheim* case.³

There is one factual difference between this case and the *Guggenheim* and *Powers* cases. The policies here involved were assigned as gifts several years after the original policies from which they were derived had been issued. In the *Guggenheim* case, the policies were assigned as gifts immediately upon their issuance. In the *Powers* case, the policies were assigned at periods after they were issued varying from 26 to 35 days. Although the court in the *Guggenheim* case purported to recognize such distinction (110 F. (2d) at 373), it nevertheless expressly stated that it was in accord with the decision reached by the District Court in this case in favor of the Government (110 F. (2d) at 374). Moreover, the decision of the court below apparently was not based in any way on the fact that the policies here involved were assigned as gifts some time after the original policies were issued.

³ The question here involved has been decided against the Government in *Commissioner v. Haines*, 104 F. (2d) 854 (C. C. A. 3d); *Helvering v. Cronin*, 106 F. (2d) 907 (C. C. A. 8th); *Helvering v. Bryan*, 109 F. (2d) 430 (C. C. A. 4th).

CONCLUSION

Wherefore, it is respectfully submitted that this petition for a writ of certiorari should be granted.

FRANCIS BIDDLE,
Solicitor General.

OCTOBER 1940.

APPENDIX

Revenue Act of 1932, c. 209, 47 Stat. 169:

SEC. 501. IMPOSITION OF TAX.

(a) For the calendar year 1932 and each calendar year thereafter a tax, computed as provided in section 502, shall be imposed upon the transfer during such calendar year by any individual, resident or nonresident, of property by gift. * * * [U. S. C., Title 26, Sec. 550.]

Treasury Regulations 79 (1933 Ed.), promulgated under the Revenue Act of 1932:

ART. 2. *Transfers reached.*—The statute imposes a tax whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. * * * In the following examples of transactions resulting in taxable gifts, it will be understood that the transactions occurred after the date of the enactment of the statute (June 6, 1932), and were not for an adequate and full consideration in money or money's worth:

* * * * *

(5) The irrevocable assignment of a life insurance policy, or the naming of the beneficiary of a policy without retaining any of the legal incidents of ownership therein, constitutes a gift in the amount of the net cash surrender value, if any, plus the prepaid insurance adjusted to the date of the gift.

(6) Where premiums on a life insurance policy are paid by an insured who has none of the legal incidents of ownership in the policy, and the beneficiary is other than the insured's estate, each premium payment is a gift in the amount thereof.

ART. 19. Valuation of property.—(1) *General.*—The statute provides that if the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift. The value of property is the price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell.

Subdivisions (2) to (8), inclusive, of this article deal, respectively, with the valuation of real estate, stocks and bonds, interest in business; notes, secured and unsecured; intangibles; annuities, life, remainder, and reversionary interests; and tenancies by the entirety.

Treasury Regulations 79 (1936 Ed.), promulgated under the Revenue Act of 1932, as amended and supplemented by the Revenue Acts of 1934 and 1935:

ART. 2. Transfers reached.—The statute imposes a tax whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. * * * In the following examples of transactions resulting in taxable gifts, it will be understood that the transactions occurred after the date of the enactment of the statute (June 6, 1932), and were not for an ade-

quate and full consideration in money or money's worth:

(5) If the insured assigns a life insurance policy, or designates a beneficiary in such a policy, but does not retain what amounts to a power of revocation (as, for example, the right to surrender or cancel the policy, the right to obtain a loan against the policy or its surrender value, or a right to change the beneficiary or assignee, if by the exercise of such latter right the proceeds of the policy might be made payable to the insured, his estate, or otherwise for his benefit), such assignment or designation constitutes a gift, even though the right of the assignee or beneficiary to receive the proceeds is conditioned upon his surviving the insured. For the valuation of policies of life insurance, see subdivision (9) of article 19.

(6) If there is an irrevocable gift of a policy of life insurance and the insured thereafter pays premiums thereon, each premium payment is a gift in the amount thereof.

ART. 19. Valuation of property—(1) General.—The statute provides that if the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift. The value of the property is the price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell. The value of a particular kind of property is not to be determined by a forced sale price or by an estimate of what a whole block or aggregate

would fetch if placed upon the market at one and the same time. Such value is to be determined by ascertaining as a basis the fair market value at the time of the gift of each unit of the property.

(9) *Life insurance and annuity contracts.*—The value of a life insurance contract or of a contract for the payment of an annuity issued by a company regularly engaged in the selling of contracts of that character is established through the sale of the particular contract by the company, or through the sale by the company of comparable contracts. As valuation through sale of comparable contracts is not readily ascertainable when the gift is of a contract which has been in force for some time and on which further premium payments are to be made, the value may be approximated, unless because of the unusual nature of the contract such approximation is not reasonably close to the full value, by adding to the interpolated terminal reserve at the date of the gift the proportionate part of the gross premium last paid before the date of the gift which covers the period extending beyond that date.

